



Report to the Auburn City Council

Action Item	5
Agenda Item No.	
City Manager's Approval	

To: Honorable Mayor and City Council Members
From: Bob Richardson, City Manager
Date: July 23, 2012
Subject: Review of City's Email Retention Policy

The Issue

Should the Council act by resolution to amend the City's policy regarding the retention of email?

Conclusions and Recommendations

This is a policy question for the City Council.

Discussion

At its July 9th meeting, the Council directed me to prepare a draft policy regarding the retention of email. The City's current policy, a provision of its electronic resources policy, states as follows:

J. RECORDS MANAGEMENT AND FILE MAINTENANCE

E-mail messages are generally considered "transitory" documents (works-in-progress), and therefore are not records of the City and are not subject to the City's minimum records retention requirements. However, particularly important e-mail messages may be official records of the City. An official record is generally defined as any writing or record of an event or information that was made or retained for the purpose of preserving its information content for future reference.

E-mails that are official records are subject to the City's records retention schedule and may be subject to disclosure in response to a request for public records. They should be retained by one of the following means: (1) printed out and maintained in the respective department filing system as a paper document; or (2) retained electronically in an organized electronic archival system established and maintained by the Administrative Service Director. E-mails that are not official records should be retained no more than 30 days. The City may automatically delete e-mails not retained in an archival system.

The proposed policy would repeal this rule, treat email as a public record to be retained for two years and made available to the public on the same terms as other public records of the City. Some improvements to the City's computer systems will be needed to accomplish this, so the email retention policy will be effective as to emails created or received by City officials starting the day after the policy is adopted. Existing memory on the City's network should be sufficient to store emails during the time it will take to accomplish the upgrades.

In general, the policy requires all emails sent to or from City elected officials and staff to be sent via or copied to an address on the City server so they can be preserved and made available to the public. Emails sent to a majority of Councilmembers concerning matters of City business should be copied to an address on the City server, so they can be preserved and made available as the Brown Act requires. All email exchanges between City officials and City staff on matters of City business will be subject to this policy. Of course, privileged items, legal advice, personnel records and other materials will be remain confidential as required by law and permitted by the Public Records Act.

To protect the ability of residents and business owners to email their elected officials without being subject to public scrutiny and to protect the privacy, First Amendment and other rights of elected officials, some emails will be exempt from this policy:

- Emails to or from Auburn residents, business owns and property owners which are not sent to a City Hall address; and
- Emails sent or received by the Councilmembers, Clerk and Treasurer in their personal, professional and political lives that are unrelated to City business.

However, the City will not use its funds to promote non-City Hall email addresses for its elected officials and staff, such as by listing them on the City website or on materials printed at City expense, such as business cards.

Alternatives and Financial Implications

If the Council opts to treat emails as public records to be maintained for the two years required by the Government Code for materials treated as public records and to make such emails available to those who seek access to City records, the City will incur one-time hardware, software and labor costs to increase its storage capacity and ongoing costs to produce email to those who request it, which will often involve City Attorney time to review materials to identify those which must be withheld for legal reasons. Making email more commonly available to the public will also require some changes in how staff uses email and more management oversight of staff to ensure that emails are well-considered and suitable for public distribution. Maintaining the existing policy also involves costs, but those are reflected in the adopted budget.

How to balance the benefits of preserving more information and making it available to the public with the fiscal and other costs of doing so is a policy question for the City

Council. If the Council adopts the policy, the hardware and software costs required will be addressed in an upgrade to the City's computer network.

Recommendations and Conclusion

If the Council wishes to adopt this proposed policy, it should:

Waive full reading and adopt the attached Resolution by title only.

1 RESOLUTION NO. 12-
2 RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN AMENDING THE
3 CITY'S EMAIL RETENTION POLICY
4

5 **WHEREAS**, on October 27, 2008 by Resolution No. 08-138 the City
6 Council of the City of Auburn adopted the 2006 version of the California City
7 Clerk's Association "Local Government Records Retention Guidelines" for city-
8 wide use to assist with compliance with records retention and destruction
9 mandates legislated in Government Code Sections 34090 and 34090.6 ("the
10 2006 Model Policy").

11 **WHEREAS**, the City adopted a staff-level, administrative policy regarding
12 the use of electronic resources that states, in its paragraph (J), that email is
13 not considered a public record unless identified for retention and retained in
14 paper form or in an electronic archive; and

15 **WHEREAS**, Sections 34090 and 34090.6 of the Government Code of the
16 State of California provide procedures whereby any City record which has
17 served its purpose and is no longer required may be destroyed (with specific
18 exceptions noted below); and

19 **WHEREAS**, the 2006 Model Policy assists all City departments with
20 compliance of Government Code Sections 34090 and 34090.6 and the 2006
21 version of these guidelines has been adopted for city-wide use; and

22 **WHEREAS**, the City Departments may retain specific records for a period
23 beyond the retention requirements outlined in the 2006 Model Policy and in
24 Government Code Sections 34090 and 34090.6 if such benefits the City; and

25 **WHEREAS**, retention is not required for non-records, preliminary drafts or
26 notes which are not retained by the City in the ordinary course of business or
27 other certain other records identified in the California Public Records Act; and
28

1 **WHEREAS**, the Council desires to amend these policies to provide
2 greater retention of, and public access to, email:

3
4 **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE**
5 **CITY OF AUBURN AS FOLLOWS:**

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7 SECTION 1. Section J of the City's electronic resources policy dated May
8 28, 2008 is hereby rescinded.

9
10 SECTION 2. The 2006 Model Policy is hereby amended to add the
11 provisions attached hereto as Exhibit A.

12
13 SECTION 3. The 2006 Model Policy does not authorize the destruction of:
14 a. Records affecting the title to real property or liens thereon;
15 b. Court records;
16 c. Records required to be kept by statute;
17 d. Records subject to retention that are less than two years old; or
18 e. The minutes, ordinances or resolutions of the City Council or of any City
19 commission, committee or board.

20
21 SECTION 4. The policies adopted by this resolution are intended to at least
22 fulfill the City's obligations under applicable state law and shall be interpreted
23 in light of that intent. If any provision, section, paragraph, sentence or word of
24 the 2006 Model Policy and / or Exhibit A, or the application thereof to any
25 person or circumstance, is rendered or declared invalid by any court of
26 competent jurisdiction, their remaining provisions, sections, paragraphs,
27 sentences or words, and their application to other persons or circumstances,
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1 shall not be affected thereby and shall remain in full force and effect and, to
2 that end, the provisions of the 2006 Model Policy and Exhibit A are severable.

3
4 SECTION 5. The City Clerk shall certify to the adoption of this resolution
5 and shall cause it to be processed in the manner required by law.

6
7 **PASSED, APPROVED AND ADOPTED** this 23rd day of July 2012.

8
9 Dated: July 23, 2012

10
11 _____
Kevin Hanley, Mayor

12 ATTEST:

13 _____
Joseph G. R. Labrie, City Clerk

14
15 I, Joseph G. R. Labrie, City Clerk of the City of Auburn, hereby certify
16 that the foregoing resolution was duly passed at a regular meeting of the City
17 Council of the City of Auburn held on the 23rd day of July 2012 by the
18 following vote on roll call:

19 Ayes:

20 Noes:

21 Absent:

22 _____
Joseph G. R. Labrie, City Clerk

1 Exhibit A to Resolution No. ____

2 July 23, 2012

3 **City of Auburn Policy**
4 **Regarding Email Retention**

5 The City's record-retention policies are hereby amended to include the
6 following:

- 7 1. All email sent or received by the City's email server from and after
8 July 24, 2012 will be preserved for a period of two years and made
9 available to public inspection on the same terms as other City records
- 10 2. Except as provided in point 3. below, Councilmembers, the City Clerk
11 and City Treasurer, and City staff will be required to use (or copy to a
12 address on) the City server for all emails regarding matters of City
13 business. Such emails fall within point 1 above.
- 14 3. Councilmembers, the City Clerk and City Treasurer need not use the
15 City server for emails to and from Auburn residents, business owners
16 and property owners other than to or from each other or City staff
17 and these emails fall outside points 1 and 2 above. Nor need these
18 officials use the City server for email traffic in their personal, political
19 and professional lives unrelated to City business. These emails, too,
20 fall outside points 1 and 2 above.
- 21 4. The City will continue to comply with Government Code § 54957,
22 which deems to be a public record any document communicated to a
23 majority of Councilmembers, whether at the same time or serially
24 with respect to an item of City business regardless of the means of
25 that communication, including via non-City email accounts. Councilmembers
26 are encouraged to forward such emails not received via the City server
27 nor copied to City staff to the City Manager or
28 Assistant City Clerk at a City Hall email address so these emails can
be preserved via the City's email retention system, relieving individual
Councilmembers of any duty to preserve such emails or make them
available for public inspection.
5. As provided in points 1, 2 and 4 above, and except as provided in
point 3 above, Councilmembers, the Clerk and Treasurer shall conduct
all email communications in the course of City business, other than
communications with individual constituents, via emails directed or
copied to the City's server or otherwise captured by the City's record
retention system.

1. 6. No City funds shall be used to promote the use of non-City email addresses for Councilmembers, the Clerk, Treasurer or other City officials as by listing such addresses on the City website or on materials printed at City expense, such as business cards.
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